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Complaint Form, Consent Form, and Complaint Processing Procedures

DISCRIMINATION COMPLAINT FORM
to the
United States Department of Education
Office for Civil Rights

1. Name of person filing this complaint:

Last Name, First, Middle	<u>Swain, Lauren</u>
Address:	<u>8532 N. Ivanhoe St., #208</u>
City, State, Zip Code:	<u>Portland, OR 97203</u>
Home/Work Telephone:	
Email Address:	<u>lauren@paulsouthwick.com</u>

2. Name of person discriminated against (if **other** than person filing). If the person discriminated against is age 18 or older, we will need that person's signature on this complaint form and the consent/release form before we can proceed with this complaint. If the person is a minor, and you do not have the legal authority to file a complaint on the student's behalf, the signature of the child's parent or legal guardian is required.

Last Name, First, Middle	<u>Hunter, Elizabeth</u>
Address:	
City, State, Zip Code:	
Home/Work Telephone:	
Email Address:	

3. OCR investigates discrimination complaints against institutions and agencies which receive funds from the U.S. Department of Education and against public educational entities and libraries that are subject to the provisions of Title II of the Americans with Disabilities Act. Please identify the institution or agency that engaged in the alleged discrimination. If we cannot accept your complaint, we will attempt to refer it to the appropriate agency and will notify you of that fact.

Name of Institution:	<u>Bob Jones University (BJU)</u>
Address:	<u>1700 Wade Hampton Blvd.</u>
City, State, Zip Code:	<u>Greenville, SC, 29614</u>
Department/School:	

4. The regulations OCR enforces prohibit discrimination on the basis of race, color, national origin, sex, disability, age or retaliation. Please indicate the basis of your complaint:

- ☐ Discrimination **based on sex (specify)**

Discrimination on the basis of (sexual orientation, gender identity and/or marital status)

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5. Please describe each alleged discriminatory act. For each action, please include the date(s) the discriminatory act occurred, the name(s) of each person(s) involved and, why you believe the discrimination was because of race, disability, age, sex, etc. Also please provide the names of any person(s) who was present and witnessed the act(s) of discrimination.

BJU publishes anti-LGBT policies in its student handbook, including a prohibition on students advocating for LGBT rights on social media. School staff disciplined Elizabeth for posting pro-LGBT material on social media and tried to force her to admit her sexual orientation during a long meeting. They asked her to disavow her support for LGBT rights and relationships, then put her on probation for refusing to do so. As a result, Elizabeth felt she could not express her views about LGBT rights and that she must hide her sexual orientation for the remainder of her time at BJU. See attached declaration.

6. What is the most **recent date** you were discriminated against?

Date: Current, Ongoing

7. If this date is **more than 180 days ago**, you may request a waiver of the filing requirement.

X I am requesting a waiver of the 180-day time frame for filing this complaint.

Please explain why you waited until now to file your complaint.

- 1) the Covid-19 pandemic;
- 2) The Trump administration's policies and statements about religious exemptions to Title IX;
- 3) The Trump administration's policies and statements about Title IX not prohibiting discrimination on the basis of sexual orientation or gender identity.
- 4) Although the initial act of discrimination took place more than 180 days ago, Elizabeth's complaint should not be considered time-barred because Bob Jones continues to discriminate against Elizabeth and to promulgate policies and practices that discriminate against LGBTQ+ students.

8. Have you attempted to resolve these allegations with the institution through an internal grievance procedure, appeal or due process hearing?

No

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9. If the allegations contained in this complaint have been filed with any other Federal, state or local civil rights agency, or any Federal or state court, please give details and dates. We will determine whether it is appropriate to investigate your complaint based upon the specific allegations of your complaint and the actions taken by the other agency or court.

Agency or Court: U.S. District Court - District of Oregon - Eugene Division

Date Filed: 03/29/21

Case Number or Reference: 6:21-cv-00474-AA

Results of Investigations/Findings by Agency or Court: Pending

10. If we cannot reach you at your home or work, we would like to have the name and telephone number of another person (relative or friend) who knows where and when we can reach you. This information is **not required**, but it will be helpful to us.

Not applicable

11. What would you like the institution to do as a result of your complaint — what remedy are you seeking?

Elizabeth would also like Bob Jones's policies amended to state that (1) same-sex dating relationships and displays of affection will be treated by Bob Jones in the same manner as opposite-sex dating relationships and displays of affection; (2) students will not be punished for coming out as LGBTQ+ or for expressing their sexual or gender identity (through pronouns, clothing, hair, makeup, etc.); (3) Bob Jones will not encourage or facilitate conversion therapy or any other sexual or gender orientation change efforts; (4) students who report sexual or physical assault will be granted safe harbor from discipline relating to sexual activity or other code of conduct violations; and (5) Bob Jones's non-discrimination policy includes sexual orientation and gender identity as applied to all aspects of Bob Jones, including housing and other programs.

12. We cannot accept your complaint if it has not been signed. Please sign and date your complaint below.

07/24/21

[Date]

Jul 24, 2021

[Date]



(Signature)

Elizabeth

(Signature of person in Item 2)



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

June 7, 2022

Ms. Lauren Swain
Paul Southwick Law, LLC
8532 N. Ivanhoe Street, #208
Portland, OR 97203

By email only to: lauren@paulsouthwick.com

Re: Bob Jones University
OCR Case No. 11-21-2234

Dear Ms. Swain:

On July 28, 2021, the United States Department of Education's Office for Civil Rights (OCR) received your complaint against Bob Jones University. You filed the complaint on behalf of a former student at the University, whom we will refer to as the Student, and on behalf of current LGBTQ+ students at the University. You allege that the University discriminates on the basis of sexual orientation. Specifically, you allege that:

1. The University discriminates against LGBTQ+ students because it publishes anti-LGBTQ+ policies in its Student Handbook, including a prohibition on students advocating for LGBTQ+ rights on social media (Allegation 1); and
2. After the Student posted support for LGBTQ+ rights on social media, the University discriminated against her on the basis of sexual orientation during the 2017-18 school year by disciplining her (Allegation 2).

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*, and its implementing regulations at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of federal financial assistance from the Department. As a recipient of financial assistance from the Department, the University is subject to Title IX.

After carefully reviewing the information you provided, OCR has determined that it will not investigate the complaint.

Allegation 1

OCR is dismissing Allegation 1 under Section 108(f) of OCR's *Case Processing Manual* (CPM), which provides that OCR will dismiss an allegation where it lacks jurisdiction over the subject matter. Your complaint alleges that the University publishes anti-LGBTQ+ policies in its

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www.ed.gov

Student Handbook, including a prohibition on students advocating for LGBTQ+ rights on social media.

By letter to the then acting Assistant Secretary of Civil Rights dated April 5, 2017, the University requested an assurance of exemption from the application of certain provisions of Title IX and its implementing regulation to the extent they restrict the University's freedom to apply and enforce its position on the sanctity of human life, and to the extent they are interpreted to reach sexual orientation or gender identity. By letter dated December 21, 2017, the then acting Assistant Secretary for Civil Rights assured the University of its exemption from 34 C.F.R. § 106.21 (admission), 34 C.F.R. § 106.22 (preference in admission), 34 C.F.R. § 106.23 (recruitment), 34 C.F.R. § 106.31 (education programs or activities), 34 C.F.R. § 106.32 (housing), 34 C.F.R. § 106.33 (comparable facilities), 34 C.F.R. § 106.34 (access to classes and schools), 34 C.F.R. § 106.36 (counseling), 34 C.F.R. § 106.37 (financial assistance), 34 C.F.R. § 106.38 (employment assistance to students), 34 C.F.R. § 106.39 (health and insurance benefits and services), 34 C.F.R. § 106.40 (marital or parental status), 34 C.F.R. § 106.41 (athletics), 34 C.F.R. § 106.43 (standards for measuring skill or progress in physical education classes), and 34 C.F.R. §§ 106.51-61 (employment), to the extent that application of these provisions would require the University to act in a manner inconsistent with its religious beliefs regarding the sanctity of human life, sexual orientation, or gender identity.

Because the University is exempt from the above-referenced regulatory provisions of Title IX insofar as application of those provisions conflicts with the religious tenets of its controlling religious organization that pertain to sexual orientation and gender identity, OCR lacks jurisdiction to address your allegation that the University discriminates based on sexual orientation by publishing anti-LGBTQ+ policies in its Student Handbook, including a prohibition on students advocating for LGBTQ+ rights on social media. Accordingly, OCR is dismissing this allegation pursuant to Section 108(f) of the CPM.

Allegation 2

According to the information provided in the Student's Declaration, which was attached to your complaint, the Student attended the University between August 2015 and May 2019, and the acts of alleged discrimination against the Student occurred during the 2017-18 academic year. As explained in Section 106 of the CPM, OCR generally will take action only with respect to allegations that are filed within 180 days of the alleged discrimination unless OCR grants a waiver under Section 107 of the CPM. You filed this complaint on July 28, 2021, more than 180 days after the University allegedly discriminated against the Student during the 2017-18 academic year.

You requested a waiver of the 180-day filing requirement for Allegation 2 on the following bases:

- 1) the COVID-19 pandemic;
- 2) the Trump administration's policies and statements about religious exemptions to Title IX;
- 3) the Trump administration's policies and statements about Title IX not prohibiting discrimination on the basis of sexual orientation or gender identity; and

- 4) although the initial act of discrimination took place more than 180 days ago, the Student's complaint should not be considered time-barred because the University continues to discriminate against the Student and to promulgate policies and practices that discriminate against LGBTQ+ students.

OCR has reviewed your request and declines to waive OCR's 180-day deadline. OCR is accordingly dismissing Allegation 2 as untimely under Section 108(d) of the CPM.

You have a right to appeal OCR's dismissal of Allegation 2 within 60 calendar days of the date indicated on this letter. An appeal can be filed electronically, by mail, or by fax. You must either submit (1) a completed appeal form online at <https://ocrcas.ed.gov/content/ocr-electronic-appeals-form> or (2) a written statement of no more than 10 pages (double-spaced, if typed) by e-mail to OCR@ed.gov, by fax to 202-245-8392, or by mail to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202. The filing date on an appeal is the date the appeal is postmarked, submitted electronically, or submitted by fax. In the appeal, you must explain why you believe the factual information described here was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how correction of any error(s) would result in the case being opened for investigation; failure to do so may result in dismissal of the appeal.

OCR would like to make you aware that individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a separate retaliation complaint with OCR.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

If you have any questions or concerns, please contact Kristi Bleyer, the OCR attorney assigned to this complaint, at (202) 245-8146, or by email at kristi.bleyer@ed.gov.

Sincerely,
DANIEL
GREENSPAHN
Dan Greenspahn
Supervisory Attorney

Digitally signed by DANIEL
GREENSPAHN
Date: 2022.06.07 15:16:56 -04'00'